

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS)(collectively the United States); and Regional Development Behavioral Health Centers, Inc. (RDBHC); Shenandoah Behavioral Health Center ("Shenandoah"), Schuylkill Haven Behavioral Health Center ("Schuylkill"), Pocono Behavioral Health Center ("Pocono") and Turning Point Behavioral Health Center ("Turning Point), John Cantwell, Joseph McGinley and Frank Milewski (collectively "the Defendants"), (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. RDBHC is a corporation that operated Community Mental Health Centers, including Shenandoah, Schuylkill, Pocono and Turning Point. John Cantwell, Joseph McGinley and Frank Milewski are owners and executives of RDBHC.

B. The United States contends that Defendants submitted or caused to be submitted claims for payment to the Medicare

Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg.

C. The United States contends that it has certain civil claims against Defendants under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, for engaging in the following conduct during the period from 1995 to 1999: for falsely certifying that Shenandoah, Schuylkill, Pocono and Turning Point met the requirements for a Medicare Community Mental Health Center; for seeking payment for services to patients who were ineligible for Partial Hospitalization Program (PHP) services or for services that were not justified; for seeking payment for services to patients who were unable to benefit from PHP services; for seeking payment for services not allowable in a Medicare PHP; and for including in their cost reports for fiscal years 1996 and 1997 requests for reimbursement for related party expenses and a management agreement which are not allowable under Medicare regulations. (hereinafter referred to as the Covered Conduct).

D. The United States also contends that it has certain administrative claims against Defendants under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b)(7), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

E. Defendants deny the contentions of the United States as set forth in Paragraphs C and D, above.

F. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Defendants agree to pay to the United States \$1,299,000 (the Settlement Amount), no later than August 15, 2003 as follows: (a) by electronic funds transfer of \$968,319.46 pursuant to written instructions to be provided by the United States Attorney's Office no later than August 15, 2003; (b) Veritus Medicare Service, ("Veritus"), on behalf of the Medicare Trust Fund, has withheld the sum of \$330,680.54 payable to entities owned by RDBHC. As partial payment of the settlement amount, the parties agree that Veritus shall release the \$330,680.54 ("Suspension Funds") it is holding to the U.S. Department of Justice to be credited towards the settlement amount owed by Defendants. Defendants hereby relinquish forever any and all claims to the Suspension Funds and all other funds payable to

entities owned by RDBHC currently held in escrow or under suspension by any carrier or fiscal intermediary or the United States ("Contested Funds"), and agree not to assert any claim for any such Contested Funds in the future. No more claims for any such funds will be filed on Defendants' behalf with any Medicare or Medicaid carrier or fiscal intermediary for the United States relative to the Suspension Funds or Contested Funds. No step to initiate, pursue or litigate any appeal from any complete or partial denial of any claim relating to the Covered Conduct will be taken on behalf of Defendants or with respect to any claim submitted by or on behalf of Defendants.

Neither the United States nor any carrier or fiscal intermediary under the Medicare or Medicaid programs will take any further step in processing for payment any pending claims of Defendants relating to the Covered Conduct. Any such pending claims will be deemed denied and Defendants will take no steps to file any appeal of any such denial.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Defendants set forth in this Agreement, conditioned upon Defendants' payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Defendants, The ReDCo Group, and Pottsville Behavioral Counseling Group, their predecessors and successors from any civil or

administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

3. In consideration of the obligations of Defendants set forth in this Agreement, and in the Corporate Integrity Agreement between the HHS-OIG and Defendants, which is attached as Exhibit 1 and incorporated herein by reference, conditioned upon Defendants' payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Defendants, The ReDCo Group, and Pottsville Behavioral Counseling Group, their predecessors and successors under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 4, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Defendants from the Medicare, Medicaid or other Federal health care program under 42 U.S.C. Section 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing

in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 4, below.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Defendants) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement or by the Corporate Integrity Agreement;

(6) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Defendants; and

(7) Any claims based on a failure to deliver items or services due.

5. Defendants have entered into a Corporate Integrity Agreement with HHS-OIG, attached as Exhibit 1, which is

incorporated into this Agreement by reference. Defendants will immediately upon execution of this Agreement begin implementing its obligations under the Corporate Integrity Agreement.

6. Defendants have provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Defendants warrant that the Financial Statements are thorough, accurate, and complete. Defendants further warrant that they did not own or have an interest in any assets which were not disclosed in the Financial Statements, and that Defendants have made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of asset(s) in which Defendants had an interest which was not disclosed in the Financial Statements, or in the event the United States learns of a misrepresentation by Defendants on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation changes the estimated net worth of Defendants set forth on the Financial Statements by Five Thousand Dollars (\$5,000) or more, the United States may at its option: (1) rescind this Agreement and reinstate its suit upon the underlying claims described in paragraph C; or (2) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the Defendants' net worth previously undisclosed. Defendants agree not to contest any

collection action undertaken by the United States pursuant to this provision.

7. In the event that the United States, pursuant to paragraph 6, above, opts to rescind this Agreement, Defendants expressly agree not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (1) are filed by the United States within 90 calendar days of written notification to Defendants that this Agreement has been rescinded, and (2) relate to the Covered Conduct, except to the extent these defenses were available on May 1, 2001.

8. Defendants waive and will not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution or administrative action. Defendants agree that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

9. Defendants fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. Defendants agree to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on contracts with the United States and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP"):

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement,

(5) the payment defendants make to the United States pursuant to this Agreement, including any costs and attorneys fees, and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to:

(i) Retain an independent review organization to perform annual reviews as described in Section III of the CIA; and

(ii) prepare and submit reports to the OIG-HHS. However, nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to Defendants.

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in non-reimbursable cost centers by Defendants, and Defendants shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report,

cost statement, information statement, or payment request submitted by Defendants or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment except to the extent such costs have already been settled as part of the Covered Conduct.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Defendants or any of their subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph except to the extent such costs have already been settled as part of the Covered Conduct.

11. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

12. Defendants agree that they will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Defendants waive any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

13. Defendants expressly warrant that they have reviewed their financial situations and that they currently are solvent within the meaning of 11 U.S.C. Section 547(b)(3), and will remain

solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

14. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Defendants represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the CIA shall be resolved pursuant to the provisions set forth therein.

17. This Agreement and the Corporate Integrity Agreement which is incorporated herein by reference constitute the complete

agreement between the Parties. This Agreement may not be amended except by written consent of the Parties except that only Defendants and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement, pursuant to Paragraph XI C of the Corporate Integrity Agreement.

18. The undersigned individuals signing this Agreement on behalf of Defendants represent and warrant that they are authorized by Defendants to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

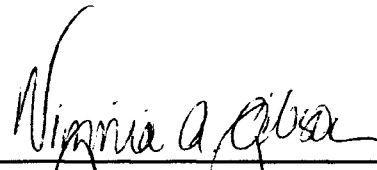
19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

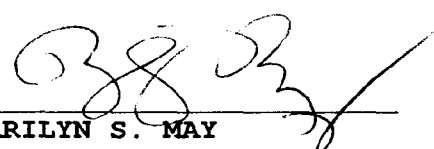
DATED: _____

BY: _____


VIRGINIA A. GIBSON
Assistant United States Attorney
Chief, Civil Division
Eastern District of Pennsylvania

DATED: 8/14/63

BY: _____


MARILYN S. MAY
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

LARRY GOLDBERG
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

THE UNITED STATES OF AMERICA


DATED: _____

BY: _____
VIRGINIA A. GIBSON
Assistant United States Attorney
Chief, Civil Division
Eastern District of Pennsylvania

DATED: _____

BY: _____
MARILYN S. MAY
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: 8/13/03

BY: 
LARRY GOLDBERG
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DEFENDANTSDATED: 8/12/03BY: Frank C. Milewski
REGIONAL DEVELOPMENT BEHAVIORAL
HEALTH CENTERS, INC.DATED: 8/12/03BY: Frank C. Milewski
SHENANDOAH BEHAVIORAL
HEALTH CENTERDATED: 8/12/03BY: Frank C. Milewski
SCHUYLKILL HAVEN BEHAVIORAL
HEALTH CENTERDATED: 8/12/03BY: Frank C. Milewski
POCONO BEHAVIORAL HEALTH
CENTERDATED: 8/12/03BY: Frank C. Milewski
TURNING POINT BEHAVIORAL
HEALTH CENTERDATED: 8/12/03BY: John J. Cantwell
JOHN J. CANTWELLDATED: 8/12/03BY: Joseph McGinley
JOSEPH MCGINLEYDATED: 8/12/03BY: Frank C. Milewski
FRANK C. MILEWSKIDATED: 8/14/03BY: John C. Dodds
JOHN C. DODDS, ESQUIRE
Counsel for Defendants